THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 21422 of 2007

DATED: 09-10-2007

Between:

M/s Vaishnavi Constructions, a Proprietary concern,
rep. by its Proprietor B.Prasad and another

…Petitioners

and

Vijayawada Guntur, Tenali Mangalagiri
Urban Development Authority at
Vijayawada, rep. by its
Vice Chairman and Managing Director and another

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 21422 of 2007

Oral order:

Heard the learned counsel for the petitioners, represented by Sri P.Venugopal, Advocate, and Smt Aruna, the learned standing counsel for the respondents.

The writ petition is directed against the order dated 4-10-2007 calling upon the 2nd petitioner to remove the deviant constructions specified therein, within seven days from the date of receipt of the notice, failing which the respondents would remove the deviations and recover the expenditure incurred, from the addressee.

The 1st petitioner is the Builder and the 2nd petitioner the owner of an extent of 1103.25 Sq. yards in R.S.No.407/5 of Poranki Gram Panchayat, Penamaluru Mandal, Krishna District. Apart from the 2nd respondent, it is claimed; two other individuals are also the owners of the land. The owners executed a development agreement with the 1st petitioner for developing the property. An application for building permission was addressed to the 1st respondent and by an order dated 25-5-2007 the 1st respondent accorded sanction to the building plan submitted for approval. The 1st petitioner commenced execution under the colour of the sanction by the 1st respondent vide its order dated 25-5-2007.

On 14-9-2007 the 1st respondent addressed the 2nd petitioner stating that the centering has been erected in stilt floor, ground, 1st and 2nd floors including certain portions not as per the Permit B.P.No.79/07

dated 25-5-2007. Para 2 and 3 of the notice spell out the deviations in the construction noticed by the respondents. In conclusion, the notice states that without obtaining sanction and contrary to the rules unauthorized construction is being made and called upon the 2nd petitioner to show-cause why the construction be not removed, within five days from the date of receipt of the notice.

In response to this notice, the 1st petitioner addressed the respondents. To the extent relevant and material, the 1st petitioner's response, in so far as the denial of the allegations in the show-cause notice are concerned, reads as under:

> "I have denied the contents of the said notice and I am continuing the construction activity as per the approved plan issued by your authority only."

The 1st petitioner would also state that no one had objected to the construction as it would not effect the rights of others particularly adjacent owners in any manner and the construction will not cause any inconvenience either to the public or private persons. This assertion is neither relevant nor germane to the principal obligation that the constructions by the petitioners must not be in deviance of the approved building permission. The respondents are obligated statutorily to demolish deviant constructions as deviant constructions and constructions made contrary to the approved building permission have a clear propensity of undermining the rule of law and the regulatory powers of the respondents under the statutory rules. The respondents have no manner of discretion whatsoever to ignore deviant constructions and permit their existence.

Sri Venugopal, the learned counsel appearing for the petitioners, having realized the vague language of the denial by the petitioners, submits that the petitioners would now submit a fresh explanation incorporating specific denial of the specific allegations in the show-cause notice dated 14-9-2007.

It requires to be noticed that by the impugned order dated 4-10-2007 a final order has been issued under Section 42(1) of the A.P. Urban Areas (Development Act), 1975 proposing removal of the deviant constructions within seven days from the date of receipt of the impugned notice, unless the addressee removes the deviant constructions before that time.

The learned standing counsel for the respondents agrees to the plea of the petitioners to afford them an opportunity to make a fresh and detailed explanation containing specific denial, if there be available.

In the circumstances, the writ petition is disposed of granting liberty to the petitioners to submit a representation/explanation to the respondents'' notice dated 14-9-2007, within seven days from today. The petitioners are at liberty to send the explanation to the respondents by registered post acknowledgment due in the name of the 2nd respondent. If such an explanation is received within the time stipulated or if no such explanation is received within time, the 2nd respondent shall, within seven days thereafter, issue a fresh order in lieu of the order dated 4-10-2007. The impugned order dated

4-10-2007 is deemed to have been withdrawn. The 2nd respondent is at liberty to pass a fresh order in accordance with law. There shall be no order as to costs.

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GODA RAGHURAM, J

09-10-2007
GRR